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must know right from wrong (p. 75). For the determination of this question, he distrusts conscience, either that of the individual or the collective conscience of mankind, for he says (p. 77) "scientific morality accepts no propositions except such as are universally true, . . . and admits no conclusions except such as can be rigidly demonstrated from the principles assumed." The principles assumed by the author as universally true, and on which his whole system apparently rests, seem to be two in number. First, laws must be equal; and second, whatever can be shown to be, in its general consequences, detrimental to mankind, is wrong. The last assumes the correctness of the utilitarian theory of morals, and the first is a mere assertion based on we know not what. To have two fundamental principles, one must show that there can never be any conflict between them. If this conflict is shown in any single case, then one rule or the other must give way and cease to be a fundamental principle. That equality before the law of those "in the same case" necessarily conduces always to the welfare of mankind, is a rule which may have few exceptions, but that it had no exceptions we would not have the temerity to affirm. Either the proposition of the utilitarians on what separates a right action from a wrong action, a good law from a bad, is correct or it is not. If it is, then all other rules are subordinate. Mr. Smith gives us two fundamental rules, though he expresses the rule that laws should be equal in several different ways. Neither of the rules is established by argument, both are assumptions, and are not shown never to conflict.

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*Corso di Diritto commerciale.* Di ERCOLE VIDARI. 4<sup>a</sup> edizione migliorata et accresciuta. Vol. I. Pp. 732. Price, 12 L. Milan: Hoepli, 1893.

One cannot better indicate the scope of this important publication than in the statement of Goldschmidt upon the first edition.\* "The author has successfully attempted to emancipate Italian commercial law from the shackles of French principles and jurisprudence, by returning to the glorious traditions of Italy and at the same time by drawing inspiration from the modern development of law among European peoples. Free not only from a purely mechanical exegesis of the laws, but as well from an economic synopsis, abstract in character and wholly independent of the principles of protective law, Vidari knows well how to unite the excellent characteristics of the French and the Germanic schools." In the present edition he was the better able to determine the positive basis of the work, since the

\* *Zeitschrift für das gesammte Handelsrecht*, vol. xxiii., p. 322

bill that was under discussion at the time of the first edition had become a statute, while the earlier edition necessarily oscillated between the proposed law and the code of 1865, which was then in force.

The material, which in the preceding edition filled nine volumes, each equal in size to the volume under consideration, is divided in the following manner: Commercial law in its relations to (1) persons; (2) things; (3) contracts; (4) insolvency and bankruptcy; (5) actions and the procedure thereof. This is the division which has been preferred for didactic purposes since the time of the Institutes of Justinian, and one which, if it has been variously judged for its practicability, even from this point of view, is certainly better than the disorderly collection of French commercial law, reproduced also in the Italian code of the present day.

In the introductory portion the author with a formula similar to that of Beslay,\* but with a formula more exact and complete, gives (p. 15, et seq.) the following definition of commerce as the object of special legislation: "The aggregate of those acts of interchange between the producer and the consumer, which exercised habitually and for the sake of gain, effectuate, promote and facilitate the circulation of the products of nature or of industry in order to render more easy and speedy their supply and demand." This definition which the author reaches by the inductive method from the examination of economic facts, opens to him the way for censuring the foundation laid down by legislation generally, including Italian and Germanic legislation, for the mercantile qualification of acts, where each is considered separately instead of in its connection with others, due to its professional exercises; and this alone to the author's mind would justify "special and rigorous provisions" (p. 27). Then, impelled by the positive character of his work, on the basis adopted by the statutes on Italian commerce, he lays down the fundamental theory of commercial acts (pp. 31-47). In the course of this exposition he notes the exceeding importance of economic notions in the study of mercantile law, and indicates two reasons on account of which jurists and also those of the great Italian school of commercial law in past centuries so long neglected the study of economic facts, that is to say, the modernness of economic science and the preponderance of Roman law, which was developed in a mercantile atmosphere, and which, the more ample it was, was so much the less complex; and varied so much the more from that of our days (p. 54, et seq.).

Passing from the commercial facts to the laws designed to govern them, the author notes the special but by no means exceptional character of mercantile law (p. 62), which appears in Art. 1 of the Italian

\* "*Des actes de commerce*," p. 25, et seq.

Code (p. 64). And given this special character, he combats (p. 65) the idea of a single civil and commercial code, an idea which has been recently advanced by certain writers. In addition to the discussion in the text Vidari amply develops the subject in an appendix at the end of the volume; he observes that the separation of the two bodies of laws has arisen historically as a consequence of the development of commerce and that the reason for the separation still exists and has, furthermore, gained greater force from the modern proportions of traffic. In order to appreciate justly the author's point of view we must take account of the fact that he writes in a country where Roman law is still the largest factor in civil legislation, and where the separate codification of the two bodies of laws is of long standing; and that since these conditions do not exist among Anglo-Saxon nations, one can very easily explain the combined civil and commercial statutes of the State of New York without gaining a single point against the assertion of the author.

There follows an historical summary upon the codification of commercial law (pp. 70-92) and a bibliography of the same (pp. 115-122).

After the introductory portion, Vidari enters upon the subject of persons and treats: *of merchants in general; of certain collective persons in particular; of commercial companies.* The matter on companies, however, will be in good part developed and completed in the second volume, to a bibliography of which it will be of advantage to give attention in gaining unity of treatment.

In regard to *merchants in general*, first as to what concerns the characteristics which determine the quality of merchant, he compares the Franco-Italian system, in which proof of the exercise of the profession is required, with the system of those codes which assume the aforesaid quality upon enrolment in a public register; and he decides in favor of the latter as more favorable for anticipating uncertainties and for guaranteeing credit in the carrying on of traffic. And also by way of introduction to this subject he reviews under the following heads the legal condition of the individual who engages in traffic (p. 149): (1) relation among co-debtors; (2) proof; (3) jurisdiction, in regard to which he censures the recent abolition of tribunals of commerce in Italy (p. 152); (4) execution; (5) insolvency.

He turns then to the question of *capacity to undertake mercantile acts, to the rights and duties of merchants, and to middle men.* In this connection he explains (p. 170) the contradiction of the Italian code in regard to minors empowered to engage in commerce who thus can perform any mercantile act whatsoever, but who on the other hand are held, in so far as civil acts are concerned, as emancipated minors who can comply only with the acts of simple administration.

He determines questions on commercial establishments, in the matter of their being capable of being transferred, given in legacy, bequeathed in inheritance (p. 292), but without implying a transference which brings upon the successor debts which have not been especially assumed in the inventory (p. 254). He notes the entirety of patrimony as guaranteeing creditors under the modern law, through which the old institution has ceased to exist, an institution which opened easily the door to fraudulent procedure, *i. e.* the institution of the division of patrimony in cases where several establishments or companies had claims upon the same debtor (p. 224 et seq.). In treating of commercial houses and of trade-marks, after a discussion of many questions of illegal competition (pp. 241, 280), he enters directly into the subject of the transference of the former (pp. 250, 251) and gives the laws in different countries for their registration (p. 263 et seq.). He speaks at length of books on commerce, and compares various legislative systems (p. 337 et seq.), among which he approves most highly the Anglo-Swiss system which gives complete liberty to merchants in the keeping of their books, provided that they render an exact account of their legal-economic condition, with penalties prescribed only in case of fraudulent acts; he adds, however, that it is a system which presupposes a healthy and vigorous condition of the commercial world.

In regard to *middle men* (*mediatori*) he discusses the question as to whether they ought to be licensed (p. 361), and whether the number of licensed middle men should be limited (p. 364), and again in reference to the powers of Chambers of Commerce over them in accordance with the Italian laws already in force (p. 418).

Before he proceeds to the question of companies he gives an exposition of the laws in regard to *collective persons*, different from the former, and here the author treats of the State, of the province, of the town, of savings banks, bringing into especial prominence the legal position acquired by the State through commerce (p. 429), which the Italian Statutes subject to the laws and the usages of commerce as well as to its mercantile acts, though they do not admit, as is done in Hungary, that the State can acquire the quality of merchant.

From these indications it is evident how large has been Vidari's work, a work which is based on Italian law and yet broadens continually into the field of comparative legislation. If in the preceding editions his work met favorable consideration in the most cultivated countries of Europe, it is worthy of appreciation also among the students and the practical workers of the United States.

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